

**ERIC JAMES HEIL, ESQ., A.I.C.P.**

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5-12-04

Max Dodson  
US EPA 8EPR  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

VIA Fax: (303) 312-6955  
Pages: 2

RE: Eric Heil as attorney for the Town of Rico

Dear Mr. Dodson,

I heard a very disturbing and concerning comment this week to the effect that the decision of Atlantic Richfield Corporation and Rico Renaissance to provide funding contributions to the Town of Rico for the purpose of pursuing voluntary clean-up plans desired by the community has somehow 'tainted' my advice to the Rico Town Board. I consider this a concern of the greatest magnitude for a couple reasons. First and most importantly, the Town Board deserves unbiased legal counsel as a matter of professionalism and anything less is not acceptable. Second, the Town Board deserves the benefit of EPA considering environmental issues in Rico on their own merits without the influence of presumed bias or impartiality on my part.

For your information, the Town did agree to a funding arrangement with ARCO several years whereby ARCO agreed to provide \$10,000.00 in funding to the Town for the purpose of assisting my time and cost as the manager/planner/attorney to review issues related to the proposed non-profit corporation/partnership VCUP for the St. Louis Tunnel. Town accepted and spent the first payment of \$3,500.00, then terminated the agreement in fall of 2002 at the time the 11-20-02 letter was sent to Sheldon Muller. The 11-20-02 letter to Mr. Muller requested the EPA to proceed with enforcement actions for the St. Louis Tunnel discharge violations because progress on a proposal for a voluntary clean-up plan for the St. Louis Tunnel was delayed and appeared to be languishing. Since that time, significant progress was made on this issue until EPA alleged that lead contamination posed an emergency health risk issue that should be bifurcated from the St. Louis Tunnel discharge violations. Town has not received any funds from ARCO since that initial payment under the previous agreement.

I am very conscious of my role in the Town of Rico, the professional rules of conduct for attorneys in Colorado, and the breadth of Town's challenges which are only compounded by our limited resources. I have personally advocated obtaining technical assistance funding from other independent sources, including a watershed protection grant to Colorado Water Conservation Board as well as grant applications to the Department of Local Affairs. I requested a letter of support from EPA for the first grant application and was initially told by Carol Russel, EPA, that she would provide such a letter. Then Ms. Russel informed me that EPA's legal counsel instructed her that she could not provide such a letter. The grant application to Department of Local Affairs was for the amount of \$25,000.00 and at the grant hearing all reviewing board members unanimously recommended providing full funding; however, the award from DOLA was only for \$15,000.00 with the requirement that Town demonstrate an additional \$15,000.00

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in matching funds. No official from EPA has ever made any effort to help the Town pursue technical assistance grants from the EPA.

Because I understand that the subject of my representation of the Town in relationship to prospective funding from ARCO and Rico Renaissance has actually been discussed by federal and state officials, I believe it would only be proper for this issue to be raised in public for the Town Board's consideration. Ashton Harrison, Town Manager, has informed me that he feels that the Town budget can afford the cost of Town involvement without any funding contribution from ARCO or Rico Renaissance. Therefore, if it would make EPA more comfortable, or otherwise be considered in its decision making, if the Town of Rico were to choose to not to receive any funding contribution from Rico Renaissance or ARCO, then I strongly suggest that the Rico Town Board has a right to be aware of this issue and EPA should feel obligated to discuss this issue publicly with the Rico Town Board.

I would like to point out that in a recent guidance Memorandum, dated June 24, 2002, from Barry Breen, Director, Subject: Response Selection and Enforcement Approach for Superfund Alternative Sites, the following guidance is provided:

"If . . . a TAG grant has not been awarded by the time of the Superfund Alternative enforcement agreement, PRP's should provide funds for technical assistance to communities in substitution for EPA to be consistent with an NPL clean-up. Generally, Regions should seek to have PRP's provide and administer funds to qualified groups to hire an independent technical advisor who can explain technical information related to site cleanup and help voice community concerns."

It seems to me that the Town's request of a funding contribution from ARCO and Rico Renaissance is entirely within the spirit of EPA's own enforcement guidelines (albeit without the enforcement action) and has the benefit of proceeding more expeditiously than any federal grant application process. As the intended use of the funding also involves engineers, surveying, map preparation, brownfields grant applications, and other non-legal issues, therefore funds received from ARCO or Renaissance could be specifically earmarked for non-legal tasks, if that is to the liking of EPA.

Of course, personally, I find such comments among the worst insults I have ever received. All I will say is that if anyone in EPA believes that ARCO is "buying" me or the Town of Rico then such views only demonstrate EPA's continued, and intentional, ignorance of our overall community issues and goals.

Sincerely,

  
Eric James Heil

Cc: Rico Town Board  
Sheldon Muller, EPA  
Tony Trumbly, Attorney General  
~~Jeff Decker~~, CDPHE  
Dave McCarthy, ARCO  
Bill Duffy, Davis, Graham and Stubbs  
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